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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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IN THE MATTER OF THE PETITION OF SPRING CANYON ENERGY, LLC FOR APPROVAL OF A CONTRACT FOR THE SALE OF CAPACITY AND ENERGY FROM ITS PROPOSED QF FACILITY	DOCKET NO. 05-035-08  <b>Spring Canyon Energy’s Response and Opposition to ExxonMobil’s Motion to Establish Deadline for Spring Canyon and Determine Availability of Stipulation Pricing for ExxonMobil</b>  <b>Spring Canyon’s Petition for Clarification of August 19, 2005 and Expedited Treatment</b>
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Spring Canyon Energy, LLC, (“Spring Canyon”) hereby responds to and opposes ExxonMobil’s Motion to Establish Deadline For Spring Canyon and Determine Availability of Stipulation Pricing for ExxonMobil, and Spring Canyon also petitions for clarification of the Commission’s August 19, 2005 order, and states as follows:

1. On August 24, 2005, ExxonMobil filed its Motion to Establish Deadline For Spring Canyon and Determine Availability of Stipulation Pricing for ExxonMobil. In the motion ExxonMobil argues that Spring Canyon has had ample time to execute a contract with PacifiCorp since the Commission issued its order August 19, 2005 settling disputed issues between Spring Canyon and PacifiCorp.

2. On August 23, 2005 at 7:05 p.m., PacifiCorp submitted a draft contract to

Spring Canyon reflecting PacifiCorp's interpretation of the Commission's decisions settling the disputed issues. Spring Canyon did not see the contract until August 24, 2005, the day ExxonMobil filed its motion. At the time it filed its motion ExxonMobil was not even aware whether Spring Canyon and PacifiCorp had executed a contract.

3. As Spring Canyon testified at hearing August 16, 17, 2005, Spring Canyon has had to reanalyze the economics of a 100 MW project in addition to reviewing PacifiCorp's draft contract and that has taken time. In addition, Spring Canyon disagrees with PacifiCorp's draft contract provision on development security and seeks clarification from the Commission as discussed below.

4. The only deadline in this proceeding is the June 1, 2007 online date established in the May 20, 2004 stipulation and approved by the Commission in Docket No. 03-035-14. There are practical deadlines facing Spring Canyon. Until an Engineering, Procurement, and Construction (EPC) Contractor informs Spring Canyon that a 100 MW project cannot be constructed and operational by June 1, 2007, or Spring Canyon cannot reach agreement with PacifiCorp, the Commission should not allow ExxonMobil to continue to interfere with Spring Canyon's efforts to complete and execute a contract. Spring Canyon will inform the Commission should either event occur.

5. Pursuant to the Commission's April 1, 2005 order in this proceeding, ExxonMobil is free to negotiate with PacifiCorp for avoided cost pricing using PacifiCorp's preferred method. ExxonMobil could also negotiate a new commercial contract. Nothing in this proceeding prevents ExxonMobil from pursuing either course. Spring Canyon's negotiations should not be driven by or negatively affected by the price

ExxonMobil is paying to maintain transmission rights into Utah.

For the foregoing reasons, Spring Canyon urges the Commission to deny ExxonMobil's motion.

Spring Canyon also seeks clarification of the Commission's August 19, 2005 order.

1. With respect to Section 2.3.4 of the contract between Spring Canyon and PacifiCorp, the Commission found that Spring Canyon has a three-month financing out. Order p.4. This provision means Spring Canyon has three months to secure construction financing for the facility, and should that not occur, Spring Canyon has no obligation and faces no losses under the contract.

2. In the draft contract PacifiCorp returned to Spring Canyon August 24, 2005, PacifiCorp added the following language to Section 11.8:

Provided, however, that if Seller's termination of this Agreement pursuant to this Section 11.8 results in PacifiCorp incurring Delay Damages, nothing in this Agreement shall preclude PacifiCorp from drawing on the Project Development Security as provided in Section 8.1.

The Commission required that Spring Canyon provide \$1 million in development security on the effective date of the contract and \$1 million dollars on the financing date. Order pgs. 5, 6. PacifiCorp's proposed language in Section 11.8 allowing PacifiCorp to draw on the development security even if Spring Canyon has been unable to secure construction financing is inconsistent with the financing out the Commission granted Spring Canyon. As noted above, a financing out means Spring Canyon bears no liability if it cannot obtain construction financing.

Spring Canyon therefore petitions the Commission to clarify the August 19, 2005 order to give effect to the financing out the Commission granted Spring Canyon and to

address this petition on an expedited basis at hearing on Wednesday, August 31, 2005 or as soon thereafter as practicable.

Respectfully submitted this 30<sup>th</sup> day of August.

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Stephen F. Mecham

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition was emailed or mailed, postage prepaid, this 30<sup>th</sup> day of August 2005, to the following:

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